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November 14, 2012

VIA ECF

Hon. Eric N. Vitaliano
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Hon. Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Berman, et al. v. City of New York, et al.
Docket No. CV 09-3017 (ENV)(CLP)
RR File No.: 001437-00001

Dear Judge Vitaliano and Magistrate Judge Pollak:

As the Court is aware, we represent the Plaintiffs in this action. We respectfully request that the deadline for scheduling the pre-trial conference be extended for sixty (60) days, from November 14, 2012 until January 14, 2013. Alternatively, we request a pre-trial conference date beyond the sixty days for the reasons set forth below.

This is Plaintiffs' second request for an extension. In its September 29, 2012 Order on the parties' motion and cross-motion for summary judgment (see Docket No. 39), this Court ordered the parties to contact United States Magistrate Judge Pollak on or before October 31, 2012, to arrange for a pre-trial conference leading to the submission of a final joint pre-trial order in preparation for trial on the issues that remain unresolved in this action. On November 2, 2012, this Court extended the deadline to November 14, 2012.

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This request is made for good cause. As this Court will recall, Eric M. Berman, one of the original plaintiffs in this action, passed away in 2010 (see Docket No. 35), after the summary judgment motions were submitted. The claims brought on behalf of Mr. Berman were thereafter voluntarily dismissed. Mr. Berman was the sole shareholder of plaintiff DBA Asset Holdings Corp. Following this Court's decision—which found issues of fact only in regard to DBA Asset Holdings Corp.'s claims—this firm attempted to ascertain the present status of DBA Asset Holdings Corp. and its ability to prosecute its claims. After conducting a diligent inquiry, we have determined that DBA Asset Holdings Corp. is no longer in business. Further, we have determined that there is no person able to testify as to the business activities of DBA Asset Holdings Corp. and that the business records of DBA Asset Holdings Corp. cannot be located. After Mr. Berman died, his law firm was placed into receivership. Mr. Berman's business records were transferred to the law firm that handled the receivership. We have been advised that after a diligent search to locate the records, there are no business records for DBA Asset Holdings Corp.

In view of the foregoing, we respectfully request a 60-day extension in order to consider the options for pursuing the claims asserted by DBA Asset Holdings Corp. in this action. Alternatively, we request that the pre-trial conference be scheduled more than sixty days from the date of this application.

We have contacted Defendants' attorney, Nicholas R. Ciappetta, and he has advised us that Defendants take no position on a sixty day extension of the deadline for scheduling the pretrial conference or scheduling the pre-trial conference beyond the sixty days.

Respectfully submitted,

RIVKIN RADLER LLP

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cc: All counsel via ECF